

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES D. SMITH,

Plaintiff,

v.

KAMALA HARRIS, et al.,

Defendants.

No. C 12-02463 JSW

**ORDER REGARDING ORDER TO
SHOW CAUSE AND VACATING
BRIEFING SCHEDULE ON
MOTION FOR LEAVE TO FILE
SEVENTH AMENDED
COMPLAINT AND MOTION FOR
A PRELIMINARY INJUNCTION**

This matter comes before the Court upon consideration of the response to an Order to Show Cause dated January 16, 2013, filed by Plaintiff, James D. Smith ("Mr. Smith"). On November 5, 2012, because of the multiple amended complaints and motions filed in this matter and in order to clarify, the Court Ordered that the operative complaint would be the fifth amended complaint received by the Court on October 19, 2012 (Docket No. 51), which was deemed filed as November 5, 2012. (*See* Docket No. 56.)

In that Order, the Court also ordered that the fifth amended complaint would be the LAST iteration of the complaint filed in this matter, and it required Defendants to file their responsive pleading by no later than 14 days after service of the Order dated November 5, 2012. Notwithstanding this Order, on November 13, 2012, Mr. Smith filed a motion for leave to file a *sixth* amended complaint. On November 20, 2012, Defendants moved to dismiss the fifth amended complaint.

On January 16, 2013, the Court denied Mr. Smith's motion for leave to file a sixth amended complaint, on the basis that the Court had ordered that the fifth amended complaint

1 would be the LAST iteration of the Complaint. (Docket No. 61.)

2 Because the Mr. Smith had not filed a response to Defendants' motion to dismiss the
3 fifth amended complaint, the Court also ordered Mr. Smith to show cause why the case should
4 not be dismissed for failure to prosecute, and it directed Mr. Smith to file a response to the
5 Order to Show Cause by February 1, 2013. The Court also noted that if Mr. Smith sought to
6 file a belated opposition brief to Defendants' motion, he must show good cause for his request
7 and must submit a proposed opposition brief with that request. The Court also ordered that any
8 such request would also be due by no later than February 1, 2013.

9 On January 30, 2013, Mr. Smith filed a Notice of Appeal of the Court's Order dated
10 January 16, 2013, as well as several orders that the Court issued earlier in the case. Mr. Smith
11 also filed his response to the Order to Show Cause, setting forth his reasons why the Court
12 should not dismiss the case for failure to prosecute. However, Mr. Smith did not seek leave to
13 file a belated opposition to the pending motion to dismiss.

14 On February 8, 2013, the Court issued an Order in which it deferred ruling on Mr.
15 Smith's response to the Order to Show Cause, pending resolution of the appeal. On February
16 28, 2013, the United States Court of Appeals for the Ninth Circuit dismissed Mr. Smith's appeal
17 for lack of jurisdiction, and it issued the mandate on March 25, 2013.

18 The Court has considered Mr. Smith's Response to the Order to Show Cause. Mr.
19 Smith is proceeding *pro se*, and the Court is required to construe his pleadings liberally. In one
20 of his most recent filings, Mr. Smith states that he thought he could continue to amend his
21 complaint until the first hearing. (See Docket No. 72, Motion for Preliminary Injunction at 14.)
22 Notwithstanding his *pro se* status, Mr. Smith is required to follow the Federal Rules of Civil
23 Procedure and the Northern District Civil Local Rules and abide by this Court's Orders.
24 *Ghazali v. Moran*, 46 F.3d, 52, 54 (9th Cir. 1995) (noting that *pro se* litigants are bound by the
25 rules of procedure), *cert denied*, 516 U.S. 838 (1995); Civil L.R. 3-9(a).

26 The Court's Order dated November 5, 2012 made it abundantly clear that the fifth
27 amended complaint would be the LAST iteration of the complaint. The Court also clearly
28 advised Plaintiff that an opposition to Defendant's responsive pleading "shall be filed by

1 Plaintiff within 14 days of the Defendants' pleading or this case shall be DISMISSED."
2 (Docket No. 56 at 2:3-6 (emphasis in original).) Despite the Court's clear directive that the fifth
3 amended complaint would be the LAST iteration of the complaint, and despite the Order to
4 Show Cause, Mr. Smith chose not to file an opposition to Defendants' motion to dismiss the
5 fifth amended complaint. Rather, after the Ninth Circuit dismissed his appeal, he filed a motion
6 for leave to file yet another amended complaint, the *seventh* in this case, in which he seeks to
7 add Governor Brown as a defendant and includes additional allegations. Mr. Smith also filed a
8 motion for a preliminary injunction. (See Docket Nos. 70, 72.) Although it is clear that Mr.
9 Smith seeks to prosecute this case, he has not complied with this Court's Order. Therefore,
10 although the Court shall not dismiss this case for failure to prosecute, it shall issue a ruling on
11 the motion to dismiss the fifth amended complaint.

12 If the Court concludes that the motion to dismiss the fifth amended complaint should be
13 granted, the Court shall consider Mr. Smith's proposed seventh amended complaint *solely* to
14 determine whether or not it would be futile to grant Mr. Smith leave to amend. For these
15 reasons, the Court VACATES the briefing schedule relating to the motion for leave to file a
16 seventh amended complaint and the motion for a preliminary injunction, pending further order
17 of the Court.

18 **IT IS SO ORDERED.**

19 Dated: April 12, 2013

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21 JEFFREY S. WHITE
22 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JAMES D SMITH,

Plaintiff,

v.

OFFICE OF THE ATTORNEY GENERAL
et al,

Defendant.

Case Number: CV12-02463 JSW


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 12, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James D. Smith
705 N. State Street #547
Ukiah, CA 95482

Dated: April 12, 2013


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk